

Restructuring & Insolvency

Court Grants Extension of Moratoria and Sealing of Documents in Restructuring of Cryptocurrency Business

Introduction

The law is constantly developing to fit the ever-changing world. Most recently, with the digitalisation of the commercial landscape and the proliferation of cryptocurrencies, NFTs and metaverse-related businesses, the courts have had to apply or adapt the law to deal with novel situations. This was the case in *Re Babel Holding Ltd and other matters* [2023] SGHC 98, where the Singapore High Court had to apply restructuring and insolvency law in the context of a cryptocurrency-related business.

The applicants were a group of companies in the cryptocurrency industry seeking to extend moratoria under section 64 of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") to facilitate the formulation of a restructuring plan, as well as to seal certain documents relating to the group's creditors.

The Court allowed the sealing of the documents, highlighting the need to safeguard the commercially sensitive information at this point in the restructuring process. The Court also allowed the extension of the moratoria, finding that the applicants had met the statutory and common law requirements for such extension.

The decision demonstrates the application of Singapore's restructuring and insolvency framework to foreign companies and the Court's approach to the grant of moratoria and sealing orders in the particular circumstances of cryptocurrency and other digital businesses. This Update provides a summary of the key points of the decision.

Brief Facts

The applications were made by companies in the Babel Finance Group, which engaged in a range of cryptocurrency-related business activities, including cryptocurrency lending and asset management. They were seeking to implement a restructuring plan via a scheme of arrangement ("**Scheme**") which contemplated substantive consolidation or pooling of the Babel Finance Group's assets and liabilities. The Scheme would also entail a deed poll structure under which one of the group's Singapore subsidiaries would become a primary co-obligor in respect of the Scheme claims of the entire Babel Finance Group. The applicants also proposed a deed poll structure.



Client Update: Singapore

2023 MAY

Restructuring & Insolvency

The applicants here applied for extensions of the moratoria to formulate the restructuring plan. They also sought the sealing of certain documents which contained the unredacted versions of lists of the applicants' creditors as well as letters of support in respect of the moratoria extension.

An objecting creditor opposed these applications, alleging that the moratoria extension applications were not *bona fide*, that certain applicants were incorporated outside of Singapore and had no connection to Singapore, and that the Scheme was unworkable.

Holding of the High Court

Sealing applications

The Court allowed the sealing applications on a balance of the competing interests in play. The applicants had submitted that it was important to preserve the confidentiality of the documents to prevent a "contagion effect" on customers whose names appeared in the documents, whereby they may suffer adverse financial consequences by being negatively associated with the applicants.

The Court highlighted that at this stage, it was concerned only with the extension of the moratoria, rather than the approval of a scheme meeting or the sanctioning of a scheme. Therefore, the need for transparency and the ability of the Scheme creditors to consult with one another was less pressing. As such, at the present stage, the Court found that the importance of safeguarding the commercially sensitive information in the documents outweighed the interests that would be served by releasing this information to the public.

Moratoria extensions

The Court held that the moratoria should be extended as the applicants had met the statutory requirements under the IRDA as well as the requirements in *Re IM Skaugen SE and other matters* [2018] SGHC 259 ("*Skaugen*").

For foreign companies seeking to implement a scheme of arrangement, the IRDA only applies to companies that have a substantial connection with Singapore. In this case, the Court found that the applicants incorporated outside of Singapore did in fact have a substantial connection with Singapore. They carried on business in Singapore, had clients and creditors in Singapore, and at least some of their work appeared to be conducted by a single team working out of Singapore.

The Court then considered the requirements for an extension of moratoria as set out in *Skaugen*: (a) that the applications are made *bona fide*; and (b) there is a reasonable prospect of the intended Scheme working and being acceptable to the general run of creditors.

The Court rejected the objecting creditor's submission regarding the applicants' lack of *bona fides*. The creditor alleged that the applicants had failed to disclose their breach of certain statutory licensing

Restructuring & Insolvency

requirements under the Payment Services Act 2019 and Securities and Futures Act 2001. However, the Court found that the allegations were not clearly established. It was not entirely clear on the available evidence that the applicants' activities had run afoul of the regulations, and MAS had not taken any action against the applicants.

The Court further held, given what had been adduced at the time, there was a reasonable prospect of the Scheme working and being acceptable to the general run of creditors. The proposed combination of pooling, conversion of assets, and fresh injection was not so unworkable that it should be rejected out of hand.

The Court thus granted a three-month extension of moratoria, with the possibility of further extension if necessary.

Concluding Words

There has been much litigation involving cryptocurrency, as well as an increasing number of restructuring and insolvency proceedings, in light of the financial challenges emerging in the industry. This decision provides further guidance with respect to the Singapore courts' approach to restructuring and insolvency for cryptocurrency-related businesses.

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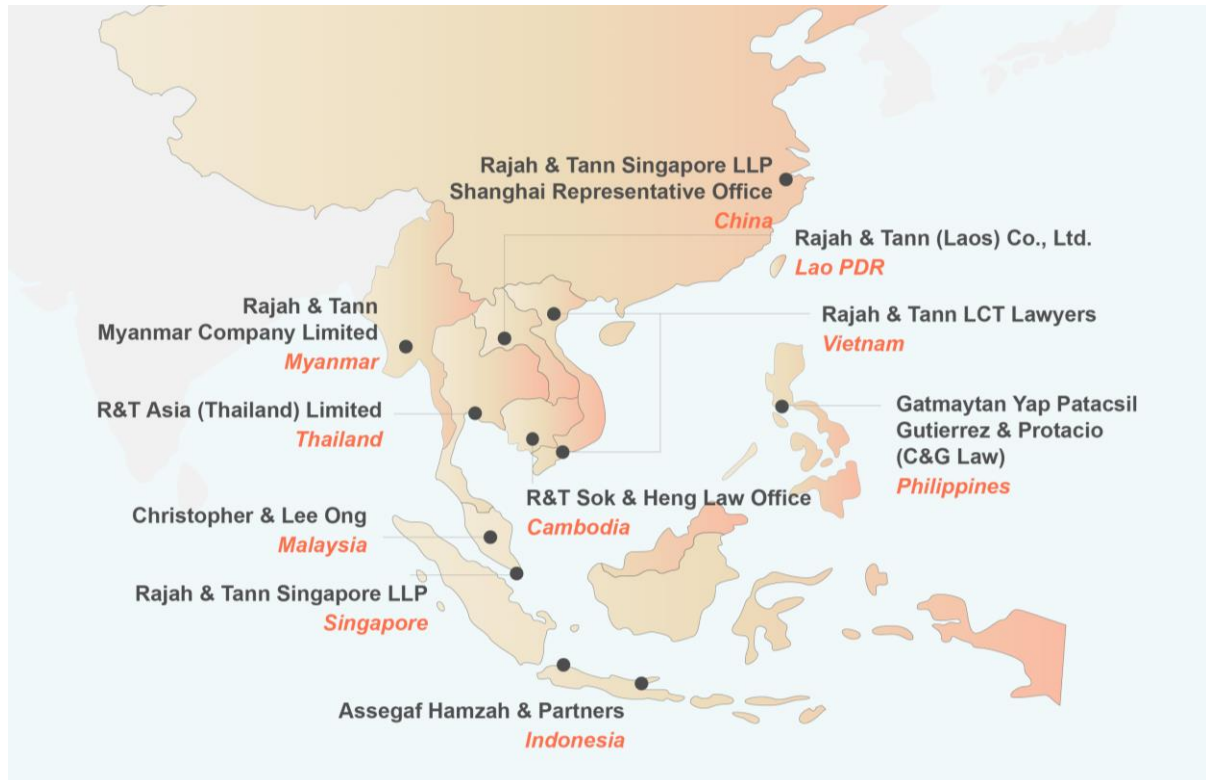
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